No.

Supreme Court, U.S.
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Supreme Court of The United States

October Term, 1996

LIVING SPRINGS RETREAT, A Religious Corporation,

Petitioner,

v.

COUNTY OF PUTNAM; TOWN OF PUTNAM VALLEY; RONALD FIORENTINO; PHILIP W. ORLANDO; and RUTH A. CLAUSE, individually and as Assessors of the Town of Putnam Valley; MAHOPAC CENTRAL SCHOOL DISTRICT OF THE TOWNS OF CARMEL AND PUTNAM VALLEY; and PUTNAM VALLEY FIRE PROTECTION DISTRICT,

Respondents.

On Petition for a Writ of Certiorari to the New York Supreme Court, Appellate Division: Second Judicial Department

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether non-compliance with a state statute of limitations is a sufficient and independent state ground which bars further review?

2. Where Courts applied reasonable guidelines to determine whether operations of business advanced substantial non-exempt purpose and did not inquire into merits of particular religious doctrine, did Court violate First and Fourteenth Amendments rights of religious organization which sought tax exempt status?

TABLE OF CONTENTS

Page

FACTUAL STATEMENT 1

A. NEW YORK REAL PROPERTY TAX LAW SECTION 420-a. 1

B. THE STATUTE OF LIMITATIONS ISSUE 2

C. THE LIVING SPRINGS RETREAT PROPERTY 2

D. THE TRIAL COURT DECISION 6

E. THE APPELLATE DIVISION DECISION . . . 8

REASONS FOR DENYING THE WRIT 10

I. NON-COMPLIANCE WITH A STATE STATUTE OF LIMITATIONS IS A SUFFICIENT AND INDEPENDENT STATE GROUND WHICH BARS FURTHER REVIEW 10

II. THE COURTS BELOW APPLIED REASONABLE GUIDELINES TO DETERMINE THAT PETITIONER FAILED TO MEET THE "PRIMARY USE" PRONG OF NEW YORK'S TRIPARTITE TEST FOR TAX EXEMPTION WHICH DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE 14

III. THERE IS NO BASIS FOR PETITIONER'S EQUAL PROTECTION CLAIM 15

CONCLUSION 17

TABLE OF AUTHORITIES

Page

Cases:

Dun & Bradstreet v. City of New York,
276 N.Y. 198 12

Gibbons v. District of Columbia,
(1886) 116 U.S. 404 10

Greater New York Corporation of Seventh Day Adventists v. Town of Dover, (1968, 2d Dept.)
29 A.D.2d 861 15

Hewlett Assocs. v. City of New York,
57 N.Y.2d 356 11

Independent Church of the Realization of the Work of God, Inc.,
(A.D., 2d Dept.) 81 A.D.2d 579 15

Johnson v. Risk, (1890),
137 U.S. 300 11

Kahal Bnei v. Fallsburgh,
78 N.Y.2d 194 (1991) 7,11
mot. for reargument den.
78 N.Y.2d 1008 11

Living Faith, Inc. v. Commissioner,
(1991, CA7) 950 F2d 365 14

Niagara Mohawk v. Troy School District,
59 N.Y.2d 262 (1983) 6,11

Paschall v. Christie-Stewart, Inc.,
(1973), 414 U.S. 100,
reh den 414 U.S. 1138,
and conformed to (Okla.)
544 P2d 505,
Cert. den 426 U.S. 935 11

Press v. County of Monroe,
50 N.Y.2d 695 13

Solnick v. Whalen, 49 N.Y.2d 224 12

Troy Towers Redevelopment Co. v.
City of Troy, 51 AD2d 173,
aff'd on opn below, 41 N.Y. 2d 816 12

Matter of Watchtower Bible & Tract Socy.
v. Lewisohn, 35 N.Y. 2d 92 12

Mtr. of Yeshivath v. Assessor,
79 N.Y.2d 244 (1992) 15

Statutes:

Real Property Tax Law § 420-a 1

Treatises:

Lee and LeForestier, Review and
Reduction of Real Property
Assessments in New York
Sect. 10.09 [2d ed.]) 12

FACTUAL STATEMENT

The issues presented before the Courts below were threefold: (1) Whether the actions were barred by the four-month statute of limitations? (2) Whether the real property of petitioner was used exclusively or "primarily" for religious purposes which is one of the standards under Section 420-a of the New York Real Property Tax Law for tax exemption? (The other standards were met by the petitioner and were not in dispute); and (3) Whether the respondent tax assessors had unconstitutionally discriminated against petitioner by granting tax exemptions to other groups or entities?

A. NEW YORK REAL PROPERTY TAX LAW SECTION 420-a.

In order to be entitled to a tax exemption under Section 420-a, a religious organization must meet the following three part test:

(1) the group must be organized or conducted exclusively for religious purposes (2) the property must be used exclusively (primarily) in furtherance of that purpose and (3) no pecuniary benefit may inure to the benefit of any of its officers, members or employees, nor may it be used as a guide for profit making operations. Parts (1) and (3) are not in issue in this case. The only issue is whether the petitioner's real property was used primarily for religious purposes.

B. THE STATUTE OF LIMITATIONS ISSUE.

The first action in this consolidated case relates to the assessment rolls for 1980 through 1984. The rolls in each year were final on July 1st, and therefore Court review of the Board of Assessors' determination can be had after said

date. The petitioner served his complaint on the Town on June 23, 1988. Thus more than eight years expired since the roll became final in 1980; seven years since the roll became final in 1981; six years since the roll became final in 1982; five years since the roll became final in 1983; and four years since the roll became final in 1994. The second complaint relates to assessment rolls for the years 1985 and 1986, and was served on October 10, 1989. The petitioner argues that the six year statute of limitations is applicable. Even assuming arguendo that the petitioner is correct, the years 1980, 1981 and 1982 are beyond the six year statute of limitations. However, the respondents claim that a four (4) month statute of limitations has been held applicable to these kind of cases by New York's highest court, the Court of Appeals. All of the years at issue would then be time-barred.

C. THE LIVING SPRINGS RETREAT PROPERTY.

The subject property consists of between 38 to 40 acres of land with various buildings and improvements. The primary buildings on the property consist of a large reconditioning center or health spa, and a number of one-family dwellings and cottages which have been renovated and in which live approximately nine (9) families and other permanent volunteers or staff. (A-803)[1]. There are other buildings which house an office, woodworking shed, commissary, heating plant and other miscellaneous uses. (A-803). There is also a church on the property. However, the church and the land upon which it sits (approximately 1 acre), was granted a full exemption and therefore it is not an issue in this case. Together these buildings and the land fronting on Bryant Pond are called Living Springs Retreat.

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[1] References are to the Joint Appendix filed in the Appellate Division containing the Record below.

Living Springs Retreat is a self-described lifestyle center operated by law members of the Seventh Day Adventist Church, who are living a communal type existence. The lay members devote themselves to following the tenets and lifestyle of the Seventh Day Adventist Church, but it must be noted that the said church is not the owner of the property; has no control over the activities conducted on the property; and is not involved in any way with daily supervision. (A-706). No ordained minister of the Church resides on the property or supervises the programs. (A-709).

There are two types of persons who use the property, i.e., "staff or volunteers" and "guests". The "staff or volunteers" consist of the lay members of the Seventh Day Adventist Church who reside in the one-family dwellings and cottages on the property. (A-721). They conduct the conditioning and health related programs, grow the farm products, and operate the vegetarian restaurant and food store owned by the petitioner in New York City. (A-729). The "guests" are members of the general public who attend the health related programs at the reconditioning center. (A-717, A-718). They may or may not be members of the Seventh-Day Adventist Church. (A-718). In fact, most ar not members. (A-735). They do not attend these programs for religious purposes, but rather for improvement of their health and fitness. The types of programs they attend are non-smoking clinics; stress management programs; heart disease prevention; weight management; and nutrition and cooking classes. (SA-31 - 34). The "guests" attend these programs as a result of newspaper advertisements and brochures which are paid for by the petitioner. (A-1092). For example, on July 25, 1982, the petitioner advertised in the "Small Inns & Lodges" section of the Sunday New York Times as follows: "BREAK AWAY". ARE YOU DRAGGING OR ARE YOU ALIVE? Living Springs Retreat in a country setting with vegetarian meals, exercise, boating, saunas, health lectures

for weight control, heart conditioning, smoking plan, stress, general conditioning. Special 2 day package for $ 99, 1 week for $ 360. Call 914-526-2800" (A-1092). There is no mention of any sort of religious activities in these advertisements. Similarly the brochures sent to potential "guests" describe the programs, facilities and activities in great detail, but not once is religion mentioned. There is no requirement that the guest even state what religion he or she is a member of in the application forms. The fees paid by the "guests" run from $ 360 per week to approximately $ 460 per week in the later years under review. (A-701).

The "guests" stay in the building known as the reconditioning center, which contains bedrooms, a dining room and exercise room, whirlpools, saunas, and a Russian steam room. (A-719 - 720). They do not attend the morning devotions, which are attended by staff only. (A-737 - 738). While the days activities are started out with a prayer, and the staff offers to pray with the "guests", the "guests" are not required to pray. (A-412 - 413). The "guests" are not required to participate in any religious activities, although they are invited to attend Friday evening and Sabbath devotions in the church. (A-739). Appellants claimed during the trial that the activities and lectures were intertwined with the religion, such as to point out the wonders of God's creation. However, when petitioner's witness Harold James Lance, President of Outpost Centers, Inc. testified, he made it clear that the basic tenets of the Seventh-Day Adventist Religion would be touched upon only in a very limited or casual way. (A-276). He further stated- "I would feel that any kind of doctrinal recitation of the particular beliefs of the Seventh-Day Adventist Church would not be given and would be inappropriate". (A-276,277). In fact, the program is such that it would not be offensive to any religious faith, such as Jewish, Catholic or Protestant. (A-413). It bears emphasis, that the petitioner's programs could have been

expressly advertised as religious, and could have been taught as Seventh-Day Adventist lectures, but they were not. It is obvious that the petitioners wanted to compete with the other health retreats or spas, and would have difficulty obtaining paying "guests" if it were presented as a religious program.

The program at the reconditioning center is a commercial enterprise open to the general public. It is very similar to the program offered by the Pawling Health Manor, a commercial enterprise. (A-1093). The Pawling Health Manor is a health retreat or spa which presents health lectures; has daily sessions in meditation and relaxing; vegetarian food demonstrations; non-smoking; weight reduction; and other activities. (A-1093). Neal Clayton Wilson, senior statesman for the Seventh-Day Adventist Church, agreed that the activities are certainly similar to those advertised by petitioner. (A-125).

The reconditioning center program, when considered by itself, including all the expenses attributable to it, makes a profit. For example, for the year ending June 30, 1986, the Treasurer of the petitioner prepared worksheets showing such an allocation between the reconditioning center and the balance of the property. The total expenses allocable to the reconditioning center are $ 91,133. The total income from the center was $108,892, leaving a profit of $ 17,759. This is using the Treasurer's own allocations, except for depreciation and taxes. The same exercise can be done for each of the years at issue and a profit would be shown, if considering the reconditioning center alone.

Another aspect of this case relates to the remaining use of the subject property. Heather Erho, Treasurer of the petitioner testified that approximately one-third to one-half of the staff or volunteers work in the reconditioning center. (A-211). The remaining staff or volunteers work in the

restaurant or health food store operated by Living Springs Retreat in New York City. (A-211). This restaurant is vegetarian, which serves approximately three hundred customers a day for breakfast and lunch. (A-730). In fact, the restaurant now serves dinner and requires two shifts of workers. (A-733). The store is a health food store open to the general public. The building in New York City is not exempt from real estate taxes. If would be very difficult to claim that this commercial enterprise is generically religious. Yet the plaintiff is asking the Town of Putnam Valley to exempt the homes in which these same workers reside from the payment of taxes. The use of these homes is not religious in nature. It is no different from any other communal type sharing arrangement.

It is the commercial nature of the vegetarian restaurant, health food store and the program at the reconditioning center that separates them from religious activities. Any spiritual or religious evangelism is clearly incidental to the commercial enterprises. The fact that they are operated by religious lay people and are consistent with Seventh-Day Adventist principles does not change their nature.

D. THE TRIAL COURT DECISION.

The trial of this matter was heard before Hon. William A. Zeck, Judicial Hearing Officer of the New York Supreme Court.

Judge Zeck held that the issue relating to this action being time barred by the four months statute of limitations, had already been determined by Judge Dickinson on December 5, 1989, citing *Niagara Mohawk v. Troy School District*, 59 N.Y.2d 262 (1983). This was an action for monies had and received, claiming that the taxing authority

had exceeded its constitutional spending limit. Judge Zeck ruled that Judge Dickinson's decision was the law of the case. However, Judge Zeck ignored a decision which was rendered by the Court of Appeals subsequent to Judge Dickinson's decision and which was squarely on point. The case is *Kahal Bnei v. Fallsburgh*, 78 N.Y.2d 194 (1991). In said case, Court distinguished the situations applicable to *Niagara Mohawk* from cases such as the case at bar, and held that the four month statute of limitations applied.

The remaining issue determined by Judge Zeck was whether the petitioner was entitled to a religious tax exemption under Real Property Tax Law Section 420-a. The issue in this case relates to the requirement that the property must be used exclusively or primarily in furtherance of religious purposes. In this regard, Judge Zeck held as follows:

> "Based upon the lack of participation of guests in Adventist religious matters, the absence of doctrinal instruction or study in the Seventh Day Adventist faith, and the focus on health improvement in plaintiff's own brochures distributed to prospective guests who pay a fee for these health-related services, the Court is constrained to find that the use of the property as a reconditioning center is primarily for health and fitness purposes rather than religious purposes. As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use if primarily residential with respect to this property and not a use incidental to a religious use of the property."

Judge Zeck further stated as follows:

> "The distinguishing feature of the cases where exemptions were granted is that the primary use of the facility involved adherents on retreat or those involved in the study of religious principles of the faith. Advertising to the general public was found to be relevant factor in the case of *The Shrine of Our Lady v. Auriesville*, *supra*, and in *Greater New York Corp. of Seventh Day Adventists v. Dover*, *supra*. In this case there is no proof that guests attend for religious reasons, for religious education or study of the Seventh Day Adventist faith, or for any reason other than the improvement of their health and fitness."

Finally, the Court held that Petitioner's claim of unequal treatment and discrimination was not supported by the evidence.

Accordingly, judgment was granted dismissing the complaint.

E. THE APPELLATE DIVISION DECISION.

At the outset, the Appellate Division dismissed the respondents' cross-appeal relating to the statute of limitations on the ground that the respondents are not aggrieved thereby, having won in the Court below on other grounds.

Referring to the lifestyle/health maintenance facility, they noted as follows:

> "...At this facility, which is opened to the general public and is attended primarily by individuals who are not members of the

> Seventh-Day Adventist religion, there are whirlpool and sauna treatments, stop-smoking programs, video programs and slide shows on health related topics, outdoor activities, classes in cooking, and other health related activities. Guests are not required to attend or take part in any traditionally overt religious activities, such as prayer groups or services. The plaintiff's advertising for the camp does not indicate that the program is religious in nature or related to the Seventh-Day Adventist Faith" [2]. 4a.

The Appellate Division also held that the Supreme Court correctly held that the property in question is not used primarily for petitioner's religious purposes. 4a.

The Court also stated that

> "...Although health and physical well being are central concerns of the Seventh Day Adventist religion, in this case the health related services are directed by the plaintiff to nonadherents of its religious principles. The fact that advertising for those services is aimed at the public as a whole supports the conclusion that the camp is not used primarily for the plaintiff's religious purposes...(citing cases)". 5a.

The Appellate Division stated further in support of its

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[2] Reference is to Appendix to Petition For Writ of Certiorari.

position that:

> "...Also significant is the fact that guests are not required to participate in any prayer services, indoctrination, or similar activities..." 5a.

Finally, the Appellate Division found that the petitioner offered no evidence that the Town granted tax-exempt status to other properties used in a similar manner to the property in question and the claim of discrimination was rejected. 5a.

REASONS FOR DENYING THE WRIT

It has been long held that imposition of taxes on real property owned by religious and charitable organizations does not violate the free exercise and establishment clauses of the First Amendment. *Gibbons v. District of Columbia*, (1886) 116 U.S. 404.

Far from applying subjective discretion as petitioner suggests, the State of New York has statutory guidelines which must be applied in order to determine which an applicant is entitled to a tax exemption. In this case, the petitioner failed to comply with the "primary use" test. Respondents did not delve into, or examine, or pass upon, the creed and theology of the Seventh Day Adventist Church. They merely made a factual determination that the primary use of the property was not a religious use.

I. NON-COMPLIANCE WITH A STATE STATUTE OF LIMITATIONS IS A SUFFICIENT AND INDEPENDENT STATE GROUND WHICH BARS FURTHER REVIEW.

It is the duty of this Court to ascertain whether a nonfederal ground of decision independently and adequately supports a judgment so as to preclude Supreme Court review. Noncompliance with a state statute of limitations is a sufficient and independent state ground which bars further review. This is true even if not discussed in the opinion. Such an issue can bar review if it appears that it offers an independent and adequate ground for decision. *Johnson v. Risk*, (1890), 137 U.S. 300; *Paschall v. Christie-Stewart, Inc.*, (1973), 414 U.S. 100, *reh den* 414 U.S. 1138, and conformed to (Okla.) 544 P2d 505, *Cert. den* 426 U.S. 935.

It is the respondents' position that the four (4) month statute of limitations applies to these cases. The petitioner contends that a six (6) year statute of limitations applies. Even if the petitioner's argument were correct, the years 1980, 1981 and 1982 must be dismissed as they were not brought within six years from the time that the assessments in said years became final. In any event, the New York Court of Appeals, in a case directly on point, *Kahal Bnei v. Fallsburg*, (1991) 78 N.Y.2d 194, *mot. for reargument den.* 78 N.Y.2d 1008, held that a four (4) month statute of limitations applies. In *Kahal*, the plaintiff brought a declaratory judgment action seeking a declaration that its property is used for religious purposes and is entitled to an exemption under Section 420-a of the Real Property Tax Law, the same relief as the case at bar. The Court held as follows:

> "However, where the challenge is that the taxing authority has exceeded its power, a plenary action may be brought collaterally attacking the assessment. The procedures of article 7 need not be followed because the assessment is void (*Niagara Mohawk Power Corp. v. City School Dist.*, 59 N.Y.2d 262, 269, *supra*). In *Hewlett Assocs. v. City of New York*, 57 N.Y.2d 356, 363, we observed that

'[i]t is well recognized that where a challenge is made to the taxing authority's jurisdiction over the subject property, the settled rule that reviews of a tax assessment may be obtained only by way of the statutory certiorari procedure is not applicable'. We noted in *Dun & Bradstreet v. City of New York*, 276 N.Y. 198,206, supra., that '[i]f taxing officers act without jurisdiction, their acts are illegal and void. In such a case, certiorari is not an adequate remedy event if a proper one'".

The "void" assessment may be challenged in an article 78 proceeding or in declaratory judgment action (see, *Matter of Watchtower Bible & Tract Socy. v. Lewisohn*, 35 N.Y. 2d 92 [improper withdrawal of prior exemption]; *Troy Towers Redevelopment Co. v. City of Troy*, 51 AD2d 173, *aff'd on opn below*, 41 N.Y. 2d 816; *Lee and LeForestier*, Review and Reduction of Real Property Assessments in New York Sect. 10.09 [2d ed.]). *Kahal's* argument that such a declaratory judgment action is governed either by those cases which hold that an equity action to "clear a cloud on title" may be brought at any time or by the "catch-all" six year limitation of CPLR 213 (1) is without merit. In *Solnick v. Whalen*, 49 N.Y.2d 224, 229, we noted that six-year limitation does not 'automatically or necessarily govern all such actions'. Rather we pointed out that is an examination of the substance of the relationship out of which the claim arises "reveals that the rights of the parties sought to be stabilized in an action for declaratory relief

> are, or have been open to resolution through a form of proceeding for which a specific limitation period is statutorily provided, then that period limits the time for commencement of the declaratory judgment action." (*Id.*, at 229-230; see also *Press v. County of Monroe*, 50 N.Y.2d 695).
>
> It is not disputed that a challenge to a "void" assessment may properly be sought in an article 78 proceeding, a form of proceeding for which a specific limitation period is statutorily provided. Thus *Kahal's* challenge to the 1987 assessment, to have been timely, must have been brought within four months from the time that the 1987 assessment became final as required by CPLR Article 78."

Since the petitioner in this action could have obtained relief to review the denial of the exemption by the Assessors in an Article 78 proceeding, the four month statute of limitations is applicable.

Judge Dickinson determined on December 5, 1989 in denying a motion to dismiss, that the four month statute of limitations did not apply. The *Kahal* case was decided by the Court of Appeals in 1991. The trial judge followed the Dickinson decision as the law of the case. The subsequent Court of Appeals decision should have been applied by the Trial Court. The Appellate Division did not address this issue, dismissing the respondents' cross-appeal relating thereto on the ground that respondents were not aggrieved by the trial court's decision. The Court of Appeals did not give reasons for its denial of leave to appeal.

II. THE COURTS BELOW APPLIED REASONABLE GUIDELINES TO DETERMINE THAT PETITIONER FAILED TO MEET THE "PRIMARY USE" PRONG OF NEW YORK'S TRIPARTITE TEST FOR TAX EXEMPTION WHICH DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE.

The issues presented to the Court were as follows: (a) Was the "reconditioning center" or health spa used primarily for religious purposes?; and (b) Were the homes and cottages which house the workers for both the "reconditioning center" and the food store and restaurant in New York City, being used primarily for religious purposes?

In *Living Faith, Inc. v. Commissioner*, (1991, CA7) 950 F2d 365, it was held that the Tax Court did not violate free exercise rights of non-profit business run by religious organization which sought tax exempt status where the court applied reasonable guidelines to determine whether operations of business advanced substantial nonexempt purpose and did not inquire into the merits of the particular religious faith. Similarly, in the case at bar, the Courts determined that the primary use of the real property in question did not advance a substantial religious purpose.

The petitioner operates a vegetarian restaurant and health food store in New York City, which is open to the general public and serves more than three hundred meals daily. While the use of vegetarian food is consistent with Seventh Day Adventist principles, that restaurant is not entitled to an exemption and does not have one. If the petitioner were to operate a commercial bowling alley open to the general public, it also would not be tax exempt, even

through exercise and a healthy body are consistent with the beliefs of said religion. The question to be determined is whether the religious aspect is primary or incidental. In making such determination, there are certain factors that the Courts usually find relevant.

In *Independent Church of the Realization of the Work of God, Inc.*, (A.D., 2d Dept.) 81 A.D.2d 579, the Court noted that certain health care services for a fee were advertised and open to nonadherents of plaintiff's religious principles. In *Greater New York Corporation of Seventh Day Adventists v. Town of Dover*, (1968, 2d Dept.) 29 A.D.2d 861, the Appellate Division pointed out that the premises were used primarily as a spiritual retreat, and that it was not open to the general public, but solely to adherents of the faith. In a more recent case, *Mtr. of Yeshivath v. Assessor*, 79 N.Y.2d 244 (1992), the Court of Appeals of New York states as follows (P.248):

> "The religious instruction programs at Woodbourne are provided to members of the Yeshivah only; they are not open to the general public. No fees are paid for the use of the facilities.."

In this case, the trial judge held as follows:

> "Based upon the lack of participation of guests in Adventist religious matters, the absence of doctrinal instruction or study in the Seventh Day Adventist faith, and the focus on health improvement in plaintiff's own brochure distributed to prospective guests who pay a fee for these health-related services, the Court is constrained to find that the use of the property as a reconditioning center is

primarily for health and fitness purposes rather than for religious purposes..."

With respect to the second inquiry, approximately one-half the persons who reside in the dwellings on the property work in the New York City food store and restaurant, and the other half work in the reconditioning center. The trial judge held that:

> "...As to use of residences by staff workers and for workers in the New York City vegetarian restaurant and health food store, such use is primarily residential with respect to this property and not a use incidental to a religious use of the property."

The Trial Court heard the testimony and reviewed the evidence. This evidence and testimony was further reviewed by the Appellate Division. The findings made are fully supported by the record and do not infringe on the petitioner's First Amendment rights.

III. THERE IS NO BASIS FOR PETITIONER'S EQUAL PROTECTION CLAIM.

The other properties used by the petitioner for comparison to the subject property are not in any way comparable. The petitioner refers to camps for underprivileged children run by Catholic Charities of New York, and the camp owned by Boy Scouts of America. These clearly are not religious exemptions as is claimed in the case at bar. The Friars of Atonement property is a religious retreat that was granted an exemption many years ago. It is a retreat for the friars or monks who use the property very quietly and privately. No violation of the exemption has ever

been observed. The Methodist Church property is used for religious retreats as well as for the scout group that it sponsors. They are all members of the church. In addition, Chairman of the Board of Assessors listed a number of properties where exemptions were denied. (A-505). These include S. Columbanus; Putnam Valley Free Library; Putnam Valley Reformed Temple; The True Answer; Smithtown Tabernacle Gospel; and one-half of Camp Madison Felicia. (A-505). The petitioner submitted no proof of unequal treatment between religious organizations.

CONCLUSION

There are no special or important reasons for granting the petition in this case. The factual determinations in this case are fully supported by the record and do not involve Federal questions. The statute of limitations issue is a sufficient and independent State ground which bars further review. The respondents respectfully request that the petition be denied.

Dated: November 12, 1996

Respectfully submitted,

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